IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 21572 of 2007(R)

PETITIONER:

C.SAKUNTHALA, THOTTINKARA, PANAYIL
VEEDU, VELIKUNNU, MUKKOLAM P.O.,
THIRUVANANTHAPURAM-44.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR
SRI.DIPU.R

RESPONDENTS:

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1. REGIONAL MANAGER, UNION BANK OF INDIA,
REGIONAL OFFICE, UNION BANK BHAVAN, P.B.NO.307,
M.G.ROAD, STATUE, THIRUVANANTHAPURAM.

2. THE AUTHORISED OFFICER, UNION BANK
OF INDIA, REGIONAL OFFICE, UNION BANK BHAVAN, P.B.
NO.307, M.G.ROAD, STATUE, THIRUVANANTHAPURAM.

3. BRANCH MANAGER, UNION BANK OF INDIA,
STATUE BRANCH, M.G.ROAD, STATUE,
THIRUVANANTHAPURAM.

ADDL. R4: P.C.GEEVARGHESE, S/O. CHACKOCHAN, PUTHENKANDATHIL
PAZHOOR (EAST) PIRAVAM
(IMPLEADED AS ADDL. R4 VIDE ORDER ON I.A. 10864/07 DT. 13/8/07)

R1 TO 3 BY ADV. SRI.A.S.P.KURUP, SC, UBI
ADDL. R4 BY ADV SRI.KOSHY GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/10/2007, THE COURT ON 16/10/07 DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: THE TRUE COPY OF THE SALE NOTICE DT. 31.5.2007 ISSUED TO THE PETITIONER

EXT.P2: -DO- OF THE MEDICAL CERTIFICATE ISSUED BY THE DOCTOR WHO TREATED THE PETITIONER'S SON

EXT.P3: -DO- OF THE REPRESENTATION DT. 11.7.2007 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT

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P.S. TO JUDGE

ANTONY DOMINIC, J.

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W.P.(C) No.21572 OF 2007-R
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Dated this the 16th October, 2007

J U D G M E N T

The petitioner, a last grade servant in a public sector undertaking, had availed of a loan of Rs.5,15,000/- from the 3rd Respondent bank during October 2005. She has 2.55 Ares of land and the loan was availed of for constructing a residential house. The house was constructed and while so, her husband, a cooli worker, as also she herself fell ill. Added to that was the mental sickness of her 19 year old son, who was undergoing treatment in the Medical College, Thiruvananthapuram, as is evident from Ext.P2 Medical Certificate issued by the Doctor treating her son. She submits that December 2006 to July 2007, her son was under continuous treatment and as a result thereof nobody was staying in the house during this period.

2. For reasons which were beyond her control, re-payment of loan was defaulted and finally she came to know that the bank had published a sale notice under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act 2002. She submits that as against the total dues of Rs.5,60,742/-, the property is worth more than Rs.14 lakhs. At that stage she filed this writ petition praying for granting 6 months time to re-pay the entire installments. Initially, by

order dated 12.07.2007, this court granted an order of stay on condition that the petitioner remits Rs.2 lakhs within 10 days, but however, she could not make the payment as ordered. When the matter came up for orders on 03.08.2007, on behalf of respondents 1 to 3 it was submitted that even before the order dated 12.07.2007 was passed the property was sold on 30.06.2007 for Rs.6,75,000/- and that the same was purchased by a person. Taking note of the above, this court directed that the petitioner shall implead the purchaser of the property as an additional respondent. Accordingly the petitioner impleaded the purchaser as additional 4th respondent.

3. On behalf of respondents 1 to 3, the Standing Counsel filed a statement that in view of the defaults committed, notice was issued under Section 13(2) of the Act and on her failure to pay the dues of the Bank, notice under Section 13(4) of the Act was issued and the Bank took possession of the property on 03.05.2007. It is also submitted that the sale notice was issued and that the property was sold for Rs.6,75,000/- and that the buyer had deposited 25% of the bid amount. It is submitted that the outstanding amount as on 01.01.2007 was Rs.5,60,742/- and that the bank had taken steps only on account of the failure of the petitioner in re-paying that amount. It is submitted that with the sale of the property to the additional 4th respondent, the bank is not in a position to consider her request for time for payment.

4. The additional 4th respondent would submit that

he has offered his best price which was accepted by the Bank and that in terms of the conditions of sale, he had immediately deposited 25% of the bid amount. It is also submitted that since the order of stay was not extended by this Court, he has deposited the balance amount also and that having complied with all formalities prescribed by the Bank, the property is liable to be delivered to him.

5. At the time when the writ petition was heard the Learned Counsel for the petitioner submitted that none of the notices preceding the sale have been actually served on the petitioner. According to the counsel, during the period from December 2006 to July 2007 petitioner's son was under continuous treatment for his mental ailment and this has been certified in Ext.P2. It is submitted that during this period there was none at their house and it was therefore that notice was not served on the petitioner.

6. The bank submits that notices were served by affixture and therefore it is evident that notice has not been personally served. Though the learned counsel for the petitioner contended that the sale is vitiated, I am not satisfied that there is any substance in any of those constitution.

7. During the hearing, the Learned Counsel for the petitioner submitted that she was willing to re-pay the entire dues of the Bank along with other charges if any, and that the bank should be directed to release the property to her. It was submitted that being a last grade servant with an ailing husband and a mentally sick son,

this court should show indulgence to her so that her residential house could be saved from being sold at a totally inadequate price. The response of the bank to this submission was that with the conclusion of the sale, they are not in a position to do anything further in the matter. The Learned Counsel for the Additional 4th respondent also submits that his client is a bonafide purchaser of the property in a public auction and that if the request of the petitioner is accepted that will unsettle all his efforts.

8. It is a fact that the petitioner is a Last Grade Servant, whose son was affected by a mental ailment. Ext.P2 certificate shows that the petitioner's son was under continuous medical treatment during the period December 2006 to July 2007. This case of the petitioner is shown to be probable since the notices were served by affixture. Though legally there is no defect in the mode of service adopted, it is to be considered whether the petitioner's offer to pay the full amount to the bank should be accepted or not.

9. As already found, petitioner is a last grade servant in a public sector undertaking whose life was overtaken by the ailment of her son. It is during that period when her life was miserable, that proceedings were initiated by the respondent bank. The consequence of the proceedings is that the petitioner and her family will be driven out from their homestead and the offer made by her is last minute attempt to save it.

10. After considering the submissions that are made

by both sides, I feel that to do justice between the parties, in the peculiar facts of this case, the petitioner should be given a chance to discharge her entire liabilities to the bank. At the same time, the additional 4th respondent who has deposited the sale consideration also should not be put to prejudice.

11. Accordingly, I dispose of this writ petition with the following directions:

> 1. That within 10 days from today the petitioner shall remit the entire amount that is due to the 3rd respondent bank.
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> 2. Along with the remittance as above, the petitioner shall also remit interest at 12% on the amount deposited by the Addl. 4th respondent from the date when he has deposited the amount till the date of deposit by the petitioner.
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> 3. If the petitioner fails to comply with the aforesaid directions, the bank will be entitled to proceed further in accordance with law.
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> 4. Subject to compliance with the orders as above, further proceedings under the Act against the petitioner's property will be deferred and on compliance with the directions, possession of the property shall be restored to the petitioner forthwith.

12. The writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

pr/jan.